

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

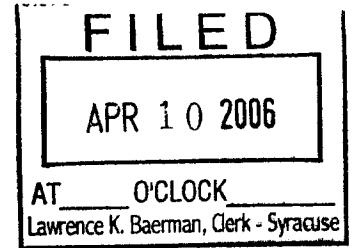
RICKY HINKLE, and
JENNIFER HINKLE,

Plaintiffs,

-vs-

OTIS ELEVATOR COMPANY,

Defendant.



1. Pursuant to 28 U.S.C. Section 1446(a), defendant, OTIS ELEVATOR COMPANY, by its attorneys, Hurwitz & Fine, P.C., hereby gives notice of the removal of this action from the State of New York, Supreme Court, County of Tompkins, to the United States District Court for the Northern District of New York.

2. A copy of plaintiffs' Summons and Complaint filed in the State Court action is attached as **Exhibit A**.

3. A copy of the defendant's verified answer is attached as **Exhibit B**.

4. Following service of plaintiffs' Summons and Complaint, defendant served a Request for Supplemental Demand for Relief pursuant to CPLR §3017(c) upon plaintiffs, attached as **Exhibit C**.

5. Less than thirty (30) days has elapsed since the receipt of plaintiffs' response to defendant's Request for Supplemental Demand for Relief. A copy of plaintiffs' letter response, which states that they have suffered damages in the amount of One Million and 00/100 Dollars (\$1,000,000.00), is attached as **Exhibit D**.

6. According to plaintiffs' Complaint, plaintiffs are residents of the State of New York (Exhibit A, ¶1).

7. According to plaintiffs' Complaint, plaintiff, RICKY HINKLE, was allegedly involved in an accident that occurred on or about September 7, 2004 on the premises known as the Fairview Apartments, located at 54 Fairview Square in Ithaca, New York.

8. Defendant is incorporated in the State of New Jersey with its corporate headquarters located in Farmington, Connecticut.

9. The amount in controversy, as stated in plaintiffs' response to this defendant's request for supplemental demand for relief, exclusive of interest and costs, exceeds \$75,000.00 (Exhibit D).

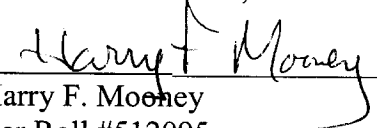
10. Defendant is entitled to remove this action pursuant to 28 U.S.C. Section 1446(a), since the District Court has original jurisdiction over the action pursuant to 28 U.S.C. Section 1332(a)(1), based upon the parties' diversity of citizenship.

11. Pursuant to 28 U.S.C. Section 1332(c)(1), a corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principle place of business.

WHEREFORE, defendant, OTIS ELEVATOR COMPANY, hereby removes this action from the State of New York, Supreme Court, County of Tompkins, to the United States District Court for the Northern District of New York.

DATED: Buffalo, New York
April 10, 2006

HURWITZ & FINE, P.C.

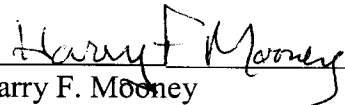

Harry F. Mooney
Bar Roll #512095
Attorneys for Otis Elevator Company
1300 Liberty Building
Buffalo, New York 14202
(716) 849-8900
hfm@hurwitzfine.com

TO: Craig Z. Small, Esq.
LAW OFFICE OF CRAIG Z. SMALL
424 Main Street, 1725 Liberty Building
Buffalo, New York 14202
(716) 847-2600

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of April 2006, served a copy of the foregoing Notice of Removal upon the individual indicated below by hand delivering a copy of same upon the following:

Craig Z. Small, Esq.
LAW OFFICE OF CRAIG Z. SMALL
424 Main Street, 1725 Liberty Building
Buffalo, New York 14202
(716) 847-2600



Harry F. Mooney

EXHIBIT A

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OTIS LEGAL

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6.0

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

RICKY HINKLE and
JENNIFER HINKLE
38 Crandall Street
Cortland, New York 13045

Plaintiffs,

vs.

OTIS ELEVATOR COMPANY
c/o CT-Corporation System
111 Eighth Avenue
New York, New York 10011

Defendant.

SUMMONS

Index No. 12006#

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TOMPKINS COUNTY CLERK
2006 JAN 10 AM 9:31

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint.

If this Summons is served upon you within the State of New York by personal service you must respond within *twenty* (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within *thirty* (30) days after service is completed, as provided by law.

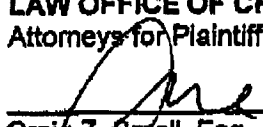
If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This action is brought in the County of Tompkins because the accident occurred in Tompkins County.

DATED: Buffalo, New York
January 5, 2006

Yours, etc.,

LAW OFFICE OF CRAIG Z. SMALL
Attorneys for Plaintiff


Craig Z. Small, Esq.
Office & P.O. Address
424 Main Street, 1725 Liberty Building
Buffalo, New York 14202
Tel.: (716) 847-2600

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OTIS LEGAL

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STATE OF NEW YORK
 SUPREME COURT : COUNTY OF TOMPKINS

RICKY HINKLE
 JENNIFER HINKLE

Plaintiff

VERIFIED COMPLAINT

v.

Index No. ~~2005~~ 2006-0044

OTIS ELEVATOR COMPANY

Defendant

Plaintiffs above-named, by their attorneys, Craig Z. Small and the Law Office of Craig Z. Small, complaining of the defendant, alleges as follows:

1. By virtue of the application of the exemption listed in Section 1602(7) of Article of the CPLR, the limitations on liability imposed by that Article do not apply to the causes of action set forth herein.

2. At all times hereinafter mentioned, the plaintiffs are residents of the City of Cortland, County of Cortland and State of New York.

3. Upon information and belief, and at all times hereinafter mentioned, the defendant Otis Elevator Company was a foreign business corporation organized under the laws of the State of New Jersey, with a principal executive office in the State of Connecticut, and a registered agent c/o C T Corporation System, 111 Eighth Avenue, New York, New York 10011.

4. Upon information and belief, and at all times hereinafter mentioned, the defendant conducted and operated its business of managing, operating, maintaining, and repairing elevators in the City of Ithaca, County of Tompkins and State of New York.

5. On or about the 7th day of September, 2004, the plaintiff was lawfully on the premises of the Fairview Apartments, 54 Fairview Square in Ithaca, New York when he was caused to fall down in an unlevelled elevator car due to the negligence of the defendant, its agents, servants and/or employees.

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**AS AND FOR THE FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, RICKY HINKLE:**

6. Plaintiffs repeat and reallege those allegations contained in paragraphs 1 through 5 with the same force and effect as if more fully set forth herein.

7. The defendant, its agents, servants and/or employees failed to maintain and repair the subject elevators and keep them in a safe and reasonable condition to persons lawfully thereat so as to constitute a menace and dangerous condition to plaintiff and others when defendant knew, or by exercise of due care should have known, of the dangerous conditions aforementioned.

8. The negligence of the defendant was the proximate cause of the accident herein, and plaintiff in no manner contributed thereto.

9. By reason of the foregoing, plaintiff was rendered sick, sore, lame and disabled, was and will be incapacitated for a long time to come, has been informed and verily believes that certain of his injuries are permanent in nature, was unable to attend to his usual duties for a considerable time, required medical aid and attention, suffered grievous physical pain and mental anguish and will continue to suffer pain for a considerable time to come.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, JENNIFER HINKLE:**

10. Plaintiffs repeat and reallege those allegations contained in paragraphs 1 through 9 with the same force and effect as if more fully set forth herein.

11. Plaintiff, Jennifer Hinkle is the lawful wife of plaintiff, Ricky Hinkle.

12. As a result of the injuries sustained by the plaintiff, Jennifer Hinkle, the plaintiff, Ricky Hinkle has been deprived of and, upon information and belief, will continue to be deprived of his society, companionship and services and, upon information and belief, plaintiff, Ricky Hinkle's loss of his society, companionship and services will be permanent, all to her damage in an amount to be determined at the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants, and each of them,

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OTIS LEGAL

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jointly and severally, on the first and second causes of action in an amount to be determined at the trial of this action; together with the costs and disbursements of the action, and for such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York
January 5, 2006

Yours, etc.,

LAW OFFICE OF CRAIG Z. SMALL
Attorneys for Plaintiff



Craig Z. Small, Esq.
Office & P.O. Address
1725 Liberty Building
424 Main Street
Buffalo, New York 14202
Tel.: (716) 847-1725

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OTIS LEGAL

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STATE OF NEW YORK)
) ss.:
 COUNTY OF CORTLAND)

RICKY HINKLE, being duly sworn, deposes and says that he resides in Cortland, New York; that he is the plaintiff in the within action and has read the foregoing Complaint; that the same is true to his own knowledge, except as to those matters therein alleged to be upon information and belief; and that as to those matters he believes it to be true.


 RICKY HINKLE

Sworn to before me this
12 day of December, 2005

Notary Public



DOLORES S. HELLER
 Notary Public, State of New York
 No. 01HE5042731
 Qualified in Cortland County
 Commission Expires April 24, 20 07

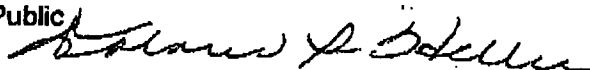
STATE OF NEW YORK)
) ss.:
 COUNTY OF Cortland)

JENNIFER HINKLE, being duly sworn, deposes and says that she resides at Cortland, New York; that she is the plaintiff in the within action and has read the foregoing Complaint; that the same is true to her own knowledge, except as to those matters therein alleged to be upon information and belief; and that as to those matters she believes it to be true.


 JENNIFER HINKLE

Sworn to before me this
12 day of December, 2005

Notary Public



DOLORES S. HELLER
 Notary Public, State of New York
 No. 01HE5042731
 Qualified in Cortland County
 Commission Expires April 24, 20 07

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OTIS LEGAL

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STATE OF NEW YORK
SUPREME COURT COUNTY OF TOMPKINS

RICHARD HINKLE, JR.
JENNIFER HINKLE

Plaintiffs

SUMMONS AND COMPLAINT

CHENELLE VANDERCOMER, ET AL.

Defendants

SUMMONS AND COMPLAINT

LAW OFFICE OF GRACIE Z. SMITH

100 West 42nd Street

Office 20th Floor

175 Liberty Street

24th Floor

New York, New York 10013

606 847 2000

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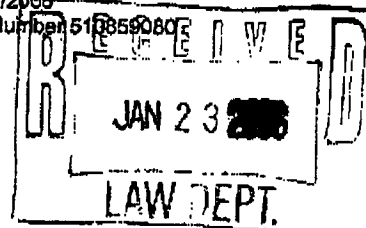
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CT CORPORATION
A WatersKluwer Company

**Service of Process
Transmittal**

01/20/2006

Log Number 510859080



TO: Patrick Corcoran
Otis Elevator Company
One Farm Springs
Farmington, CT, 06032-

RE: Process Served in New York

FOR: Otis Elevator Company (Domestic State: NJ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

| | |
|------------------------------------|--|
| TITLE OF ACTION: | Ricky Hinkle and Jennifer Hinkle, Pliffs. vs. Otis Elevator Company, Dft. |
| DOCUMENT(S) SERVED: | Summons, Verified Complaint. |
| COURT/AGENCY: | Tompkins County, the Supreme Court, State of New York, NY Case # 2006-0044 |
| NATURE OF ACTION: | Personal Injury - Slip and Fall - Alleges personal injuries/damages sustained on or about Sept. 7, 2004 due to accident on premises. |
| ON WHOM PROCESS WAS SERVED: | C T Corporation System, New York, NY |
| DATE AND HOUR OF SERVICE: | By Process Server on 01/20/2006 at 11:17 |
| APPEARANCE OR ANSWER DUE: | 20 Days. |
| ATTORNEY(S) / SENDER(S): | Craig Z Small, Esq. Law Office of Craig Z Small 424 Main Street 1725 Liberty Building Buffalo, NY, 14202 716 847 2600 |
| ACTION ITEMS: | SOP Papers with Transmittal, via Fed Ex 2 Day, 780293615608 |
| SIGNED: | C T Corporation System |
| PER: | Christopher Tilton |
| ADDRESS: | 111 Eighth Avenue New York, NY, 10011 |
| TELEPHONE: | 212-894-8940 |

Page 1 of 1 / RJ

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action.

EXHIBIT B

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

RICKY HINKLE and JENNIFER HINKLE,

Plaintiffs,

-vs-

VERIFIED ANSWER

Index No.: 2006-0044

OTIS ELEVATOR COMPANY,

Defendant.

The defendant, OTIS ELEVATOR COMPANY, hereinafter referred to as "this defendant" by its attorneys, HURWITZ & FINE, P. C., as an for a verified answer to the complaint of plaintiffs, RICKY HINKLE and JENNIFER HINKLE, herein states the following:

1. Admits the allegations contained in paragraphs 3 and 4 of the complaint.
2. Denies each and every allegation contained in paragraph 5 of the complaint.
3. Denies having knowledge and information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.
4. Unable to set forth an answer with respect to paragraph 1 as it calls for a legal conclusion. However, insofar as this defendant is required to answer, it denies the allegations set forth in paragraph 1 of the complaint.

AS AND FOR AN ANSWER TO THE FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RICKY HINKLE:

5. As and for an answer to paragraph 6, this defendant repeats and realleges its answers to paragraphs 1 through 5 with the same force and effect as if fully set forth herein.

6. Denies each and every allegation contained in paragraphs 7, 8 and 9 of the complaint.

AS AND FOR AN ANSWER TO THE SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RICKY HINKLE:

7. As and for an answer to paragraph 10, this defendant repeats and realleges its answers to paragraphs 1 through 9 with the same force and effect as if fully set forth herein.

8. Denies having knowledge and information sufficient to form a belief as to the allegations contained in paragraphs 11 and 12.

9. Denies each and every other allegation in all causes of action not heretofore controverted.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF:

10. The injuries and/or damages alleged in the plaintiffs' complaint were caused in whole or in part by the culpable conduct, want of care and assumption of risk on the part of the plaintiffs, and without negligence, fault or want of care on the part of this defendant.

**AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF:**

11. That in the event a verdict or decision is rendered in favor of plaintiffs against this answering defendant, said defendant is entitled to limitations on liability as set forth in Article 16 of the CPLR.

**AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF:**

12. That pursuant to §4545 and other applicable sections of the CPLR, the defendant is entitled to a set off against the amount of any verdict of any monies collected from a collateral source of payment as set forth in said law.

WHEREFORE, this defendant, demands judgment as follows:

1. Dismissing the complaint herein, or
2. Determining the ultimate rights and responsibilities among the parties, including the culpable conduct of the plaintiffs and that of any tortfeasor jointly liable and further demands that if plaintiffs recover judgment against this answering defendant, the amount of damages be diminished in the proportion which the culpable conduct attributable to plaintiffs bears to the culpable conduct which caused the damage; and
3. Reducing plaintiffs' recovery in the proportion to which the plaintiffs' culpable conduct, assumption of risk and want of care bears to the culpable conduct which caused the plaintiffs' damages, and

4. Such other and further relief as to this court may seem just proper and equitable, together with the costs and disbursements of this action.

DATED: Buffalo, New York
February 8, 2006

HURWITZ & FINE, P.C.


Jody E. Briandi, Esq.

Attorneys for Defendant,

Otis Elevator Company

1300 Liberty Building

Buffalo, New York 14202

(716) 849-8900

TO: Craig Z. Small, Esq.
Law Office of Craig Z. Small
Attorneys for Plaintiffs
424 Main Street
1725 Liberty Building
Buffalo, New York 14202
(716) 847-2600

EXHIBIT C

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

RICKY HINKLE and JENNIFER HINKLE,

Plaintiffs,

-VS-

OTIS ELEVATOR COMPANY,

Defendant.

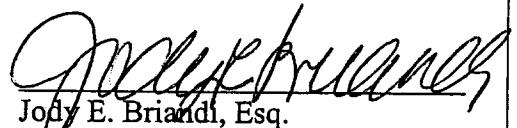
**REQUEST FOR SUPPLEMENTAL
DEMAND FOR RELIEF**

Index No.: 2006-0044

PLEASE TAKE NOTICE, that pursuant to CPLR 3017(c), defendant, OTIS ELEVATOR COMPANY, hereby requests that, within fifteen (15) days hereof, the plaintiffs, serve a supplemental demand for relief setting forth the total damages to which they deem themselves entitled.

DATED: Buffalo, New York
February 8, 2006

HURWITZ & FINE, P.C.



Jody E. Briandi, Esq.
Attorneys for Defendant,
Otis Elevator Company
1300 Liberty Building
Buffalo, New York 14202
(716) 849-8900

TO: Craig Z. Small, Esq.
Law Office of Craig Z. Small
Attorneys for Plaintiffs
424 Main Street
1725 Liberty Building
Buffalo, New York 14202
(716) 847-2600

EXHIBIT D

LAW OFFICE OF CRAIG Z. SMALL

A T T O R N E Y A T L A W

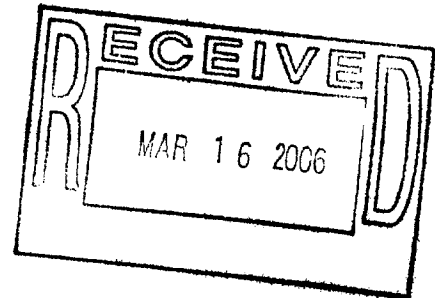
Main Office:
424 Main Street
Suite 1725
Buffalo, New York 14202

Satellite Office:
3522 James Street
Syracuse, New York 13221
(315) 836-0060

Telephone: (716) 847-2600
Telefax: (716) 847-2020
csmall@smallaw.com
www.smallaw.com

March 13, 2006

Jody E. Briandi, Esq.
Hurwitz & Fine, P.C.
424 Main Street
1300 Liberty building
Buffalo, New York 14202



Re: Hinkle v. Otis Elevator Company
Index Number: I 2006/0044

Dear Ms. Briandi:

In response to your Omnibus Discovery Demands in the above referenced matter, please be advised as follows:

1. The plaintiff is not in possession of any statements made by the defendant.
2. The plaintiff is not in possession of any statements made by any other party to this lawsuit.
3. The plaintiff is not aware of any admission witnesses to this incident.
4. Duly executed authorizations for medical records are attached.
5. The treating providers for the plaintiff are:

Goldwyn Boyland Physical Therapy
1105 Route 13
Cortland, New York 13045

Progressive Neurosurgery, P.C.
Gerald M. Zupruk, M.D.
201 Dates Drive, Suite 101
Ithaca, New York 14850

Matthew Estill, M.D.
1780 Hanshaw Road
Ithaca, New York 14850

Melissa Thibault, M.D.
201 Dates Drive
Suite 101
Ithaca, New York 14850

Dates of treatment are ongoing.

6. Experts will be revealed at the appropriate time.
7. Medical records in the possession of the plaintiff are attached.


8. Duly executed authorizations for employment records and Worker's Compensation records are attached.
9. A duly executed authorization for Social Security records is attached.
10. Witnesses to the incident or condition of the elevator are Jennifer Hinkle, Tim Stockholm, Patricia Petrilla (both employees of Fairview Apts.), Jay Baldwin, S. Chen and S. Friedman (all Otis Elevator employees).
11. The plaintiff is not in possession of any photos.
12. The plaintiff is not in possession of any accident reports.
13. There are no excess insurance agreements.
14. The plaintiff is not in possession of any documents generated by the defendant.
15. A copy of the Affidavit of Service is attached. The date of the filing of the Summons and Complaint is January 10, 2006.
16. The only collateral source of payment is the Worker's Compensation carrier, Traveler's Insurance Company, P.O. Box 4614, Buffalo, New York 14240, adjuster Rob Logue, WCB case number 9050 2566, carrier case number 015-CB-ALQ3327J.
17. The plaintiff is not in possession of any photos or films.

In regard to your Request for Supplemental Demand for Relief, please be advised that we are requesting \$1,000,000.00 in total damages.

Also enclosed, please find our Verified Bill of Particulars, as well as our Demand for Verified Bill of Particulars, Omnibus Discovery Demands and Cross-Notice to Take Deposition.

If you have any questions, please do not hesitate to call.

Very truly yours,


CRAIG Z. SMALL

CZS/djj
Enclosures